

Senate File 541 - Reprinted

SENATE FILE _____
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SF 313)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to consumer protection in specified home loans.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 2528SV 82
4 rn/gg/14

PAG LIN

1 1 Section 1. NEW SECTION. 714C.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Consumer home loan" means a loan, including a home
1 5 equity line of credit as defined in section 535.10, in which
1 6 the borrower is a natural person, the loan proceeds are to be
1 7 used primarily for personal, family, or household purposes,
1 8 and the loan is secured by a mortgage or deed of trust upon
1 9 residential real property as defined in section 535B.1.
1 10 Consumer home loan includes a loan used to purchase
1 11 residential real property and a refinancing of an existing
1 12 consumer home loan, but specifically excludes reverse mortgage
1 13 transactions.
1 14 2. "Lender" means a person who makes a loan.
1 15 3. "Mortgage banker" means the same as defined in section
1 16 535B.1, and includes natural persons required to be registered
1 17 under section 535B.4A.
1 18 4. "Mortgage broker" means the same as defined in section
1 19 535B.1, and includes natural persons required to be registered
1 20 under section 535B.4A.
1 21 5. "Person" means the same as defined in section 535B.1.
1 22 6. "Reverse mortgage transaction" means a loan for a
1 23 definite or indefinite term secured by a first mortgage or
1 24 first deed of trust on the principal residence of the
1 25 mortgagor located in Iowa, the proceeds of which are disbursed
1 26 to the mortgagor in one or more lump sums, or in equal or
1 27 unequal installments, either directly by the lender or the
1 28 lender's agent, and that requires no repayment until a future
1 29 time, upon the earliest occurrence of one or more events
1 30 specified in the reverse mortgage loan contract such as the
1 31 sale of the property or the death of the borrower.
1 32 Sec. 2. NEW SECTION. 714C.2 CONSUMER PROTECTIONS IN
1 33 CERTAIN HOME LOANS.
1 34 In any consumer home loan, a lender, mortgage banker, or
1 35 mortgage broker, shall not:
2 1 1. Recommend or encourage default on an existing loan or
2 2 other debt prior to and in connection with the closing or
2 3 planned closing of a consumer home loan that refinances all or
2 4 any portion of such existing loan or debt.
2 5 2. Knowingly misrepresent to a borrower the borrower's
2 6 credit rating or credit status.
2 7 3. Knowingly misrepresent, inflate, or fabricate, or
2 8 encourage a borrower to misrepresent, inflate, or fabricate,
2 9 the source or amount of a borrower's actual income or assets
2 10 in the application or underwriting process of a consumer home
2 11 loan.
2 12 4. Knowingly misrepresent or conceal material facts or
2 13 make false promises likely to influence, persuade, or induce a
2 14 borrower to enter into a consumer home loan.
2 15 5. Fail to disburse funds in accordance with a written
2 16 commitment or agreement to make a consumer home loan.
2 17 6. Knowingly engage in any transaction, practice, or
2 18 course of business in connection with a consumer home loan
2 19 that is not in good faith or that constitutes a fraud upon any

2 20 person.
2 21 Sec. 3. NEW SECTION. 714C.3 WAIVER PROHIBITED.
2 22 The terms of this chapter cannot be waived or modified by
2 23 contract or otherwise.
2 24 Sec. 4. NEW SECTION. 714C.4 EXEMPTION == CLAIMS AGAINST
2 25 ASSIGNEES OR PURCHASERS OF LOANS.
2 26 The provisions of this chapter shall not apply to federally
2 27 insured depository institutions or their subsidiaries or
2 28 affiliates, or to loans originated by federally insured
2 29 depository institutions or their subsidiaries or affiliates.
2 30 No claim or defense under this chapter may be asserted by the
2 31 attorney general or any consumer against an assignee or
2 32 purchaser of a mortgage loan for value unless one of the
2 33 following applies:
2 34 1. The violation was committed by the assignee or
2 35 purchaser.
3 1 2. The assignee or purchaser is affiliated by common
3 2 control with the seller of the loan at the time of such
3 3 assignment or purchase.
3 4 Sec. 5. NEW SECTION. 714C.5 REMEDIES.
3 5 1. A violation of this chapter is an unlawful practice
3 6 pursuant to section 714.16, subsection 2, paragraph "a".
3 7 2. A borrower who suffers damage or injury as the result
3 8 of a practice which violates this chapter, acting only in an
3 9 individual capacity, may bring an action at law to recover
3 10 actual damages. The court may order such equitable relief as
3 11 it deems necessary to protect the public from further
3 12 violations, including temporary and permanent injunctive
3 13 relief. In an action in which it is found that a person has
3 14 violated this chapter, the court shall award to the borrower
3 15 the costs of the action and to the borrower's attorneys their
3 16 reasonable fees. Reasonable attorney fees shall be determined
3 17 by the value of the time reasonably expended by the attorney
3 18 including but not limited to consideration of the following
3 19 factors:
3 20 a. The time and labor required.
3 21 b. The novelty and difficulty of the issues in the case.
3 22 c. The skills required to perform the legal services
3 23 properly.
3 24 d. The preclusion of other employment by the attorney due
3 25 to the attorney's acceptance of the case.
3 26 e. The customary fee.
3 27 f. Whether the fee is fixed or contingent.
3 28 g. The time limitations imposed by the client or the
3 29 circumstances of the case.
3 30 h. The amount of money involved in the case and the
3 31 results obtained.
3 32 i. The experience, reputation, and ability of the
3 33 attorney.
3 34 j. The undesirability of the case.
3 35 k. The nature and length of the professional relationship
4 1 between the attorney and the client.
4 2 1. Damage awards in similar cases.
4 3 3. In order to recover damages, a claim under this section
4 4 shall be proved by a preponderance of the evidence.
4 5 4. If the finder of fact finds that a prohibited practice
4 6 in violation of this chapter constitutes willful and wanton
4 7 disregard for the rights or safety of another, in addition to
4 8 an award of actual damages, statutory damages up to three
4 9 times the amount of actual damages may be awarded to a
4 10 prevailing borrower.
4 11 5. This section shall not affect a borrower's right to
4 12 seek relief under any other theory of law.
4 13 6. A lender, mortgage banker, or mortgage broker in a
4 14 consumer home loan who, when acting in good faith, fails to
4 15 comply with the provisions of this chapter does not violate
4 16 this chapter if, within sixty days of receiving notice of the
4 17 failure to comply, the lender, mortgage banker, or mortgage
4 18 broker makes appropriate restitution and whatever adjustments
4 19 are necessary to correct the violation.
4 20 Sec. 6. NEW SECTION. 714C.6 APPLICABILITY OF OTHER LAW.
4 21 This chapter establishes specific consumer protections in
4 22 consumer home loans that are in addition to other consumer
4 23 protections that may be otherwise available under state or
4 24 federal law.
4 25 Sec. 7. NEW SECTION. 535B.12A APPLICABILITY OF OTHER
4 26 LAW.
4 27 A violation of chapter 714C is a violation of this chapter.
4 28 Sec. 8. NEW SECTION. 536.19A APPLICABILITY OF OTHER LAW.
4 29 A violation of chapter 714C is a violation of this chapter.
4 30 Sec. 9. NEW SECTION. 536A.27A APPLICABILITY OF OTHER

4 31 LAW.

4 32 A violation of chapter 714C is a violation of this chapter.

4 33 SF 541

4 34 rn:nh/cc/26